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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In re O.A., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

O.A.,

Defendant and Appellant.

F058394

(Super. Ct. No. 09CEJ600222)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Gary D. Hoff,
Judge.

Janet J. Gray, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney
General, Julie A. Hokans and Judy Kaida, Deputy Attorneys General, for Plaintiff and
Respondent.

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At the conclusion of a jurisdictional hearing, the juvenile court found true that appellant committed second degree murder and personally and intentionally discharged a firearm. The court found not true the criminal street gang allegation. At a dispositional hearing, appellant was declared a ward of the court and the court determined the maximum time appellant could be confined was 40 years to life, consisting of a term of 15 years to life on the second degree murder finding and a term of 25 years to life on the firearm enhancement finding. Restitution was ordered in the amount of \$4,938. Appellant appeals on the sole ground that there was insufficient evidence to support the court's finding that appellant shot the victim. We find there was sufficient evidence to support the finding and affirm.

STATEMENT OF FACTS

On February 21, 2009, at about 10:30 p.m., Saul Lopez was fatally shot on the sidewalk in front of 1285 East North Avenue in Reedley, California. Earlier that afternoon, Lopez, his girlfriend, Yesenia Ordunez, and Carmen Aguilara were at Ordunez's house, located at 1285 East North Avenue. Later, the three walked to Aguilara's house, which was on the 200 block of Haney Avenue, about five minutes from Ordunez's house. Between 10:30 and 11:00 p.m., the three returned to Ordunez's house. While en route, a car containing "a lot of guys" drove by them several times. As it passed them, the car slowed down and the men inside the car stared at the three of them.

After returning to Ordunez's house, Lopez and Ordunez stood by the back tire of Ordunez's truck, which was parked in the middle of the yard. Aguilara sat on top of a refrigerator that was in back of the truck. A few minutes later, a brown car drove past the house, travelling north on Haney Avenue. It drove past the house two more times. Three minutes later, two men appeared on the opposite side of the street from Ordunez's house, walking on the sidewalk. The two men crossed Haney Avenue to the sidewalk in front of Ordunez's neighbor's house and said "[W]hat's up ene[?]" Lopez then walked to the sidewalk in front of Ordunez's house, toward the two men. Lopez's hands were at his

sides. The two men stood about five feet from him. The “White” man pulled out a gun from the waistband of his pants. Lopez looked at the gun and turned away. The man pointed the gun at Lopez and fired two shots. Lopez grabbed his side, ran toward Ordunez’s house and fell on the lawn. Both of the men then ran on the sidewalk.

The police were called. At about 11:05 p.m., the police contacted Lopez, Ordunez and Aguilara about 100 yards from Sierra Kings Hospital. Ordunez was sitting on the ground with Lopez’s head in her lap. Lopez was unconscious, not breathing and did not have a pulse. The police attempted to administer CPR to Lopez, after which medical personnel arrived and transported him to the hospital emergency room. An autopsy of Lopez’s body indicated the cause of death was perforation of the heart due to a gunshot wound to the chest.

Aguilara told police that the perpetrators’ car was an older model, bronze-colored Toyota, that three males were inside the Toyota and that the men looked like Nortenos. The police searched the area for the shooting suspects and the suspects’ vehicle. An officer observed a vehicle make an unsafe turn and pulled the vehicle over. Two men were in the vehicle. Appellant was the driver. The front seat passenger was identified as Michael Maciel.

Between 11:30 p.m. and midnight, the police transported Aguilara to the location of the vehicle stop, which was about two blocks from Ordunez’s house. According to police testimony, as they approached the vehicle, Aguilara stated “[T]hat’s the car.” Aguilara asked the officer if appellant and Maciel could see her. The officer told her they could not see her because of the spotlight. Aguilara identified Maciel as the shooter’s companion. Aguilara identified appellant as the shooter. She stated she was 100 percent certain of her identification. Ordunez did not identify appellant or Maciel during a subsequent in-field show-up.

On February 24, 2009, Aguilara viewed photographs at the police department. She identified Maciel’s photograph as that of the shooter’s companion. She told the

police that the Sureno gang blamed her for Lopez's murder because her brothers were Norteno gang members. She testified that she told the detective she thought she and her brothers might be targets after the Nortenos found out that she had identified another Norteno as the shooter. She was scared that they were going to hurt her family and she was afraid of retaliation from the Norteno and Sureno gangs.

At trial, Aguilara testified that appellant was not the person who shot Lopez. She also testified that she identified a person as the shooter during an in-field show-up that occurred later in the evening after the shooting.

Appellant contends that insufficient evidence supports the court's finding that appellant was responsible for shooting Lopez. Appellant emphasizes that no one identified appellant *at the trial* as the shooter, even though there were two witnesses who saw the suspects that were involved in the shooting. Although Aguilara did identify appellant during the field identification, she did not have a clear view of both suspects' faces and described the shooter as White. After hearing and considering all of the evidence, the juvenile court found that appellant was the shooter beyond a reasonable doubt, noting:

“As to the finding of true the allegation of murder and the personal use of a firearm causing the death, the court considered the evidence of Miss Aguilara, her testimony concerning her out-of-court identification to be quite compelling. The court finds that it was something that was done close in time. The description that she gave based upon her observations, based upon the amount of time she had to observe, based upon the admonition that was given to her prior to the identification, her ability to observe the amount of time from the incident to the in-field show-up and her level of certainty at the time that the identification was made, [the] court found that that evidence was compelling as to her identification of [appellant] as the individual involved. I further note that even though in her testimony before the court she stated that [appellant] was not the shooter, she also reiterated that the person or persons that she identified at the location of the field show-up were the individuals involved, and other evidence supported the fact that [appellant] was that person at that location who she identified.”

Thus, the juvenile court recognized the conflict in the evidence between Aguilara's certain identification of appellant as the shooter during the in-field identification and her inability to make that same identification during the trial.

DISCUSSION

A conviction can be reversed on the grounds of insufficiency of the evidence only when ““it is made clearly to appear that upon no hypothesis whatever is there sufficient substantial evidence to support the conclusion reached in the court below.”” (*People v. Resendez* (1968) 260 Cal.App.2d 1, 7, citing *People v. Newland* (1940) 15 Cal.2d 678, 681.) For evidence to be substantial it must be of ponderable legal significance, reasonable in nature, credible and of solid value. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) The appellate court must view the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Mosher* (1969) 1 Cal.3d 379, 395.) Due process mandates that the standard for evaluating the sufficiency of evidence in a criminal case is whether *any* rational trier of fact could find guilt beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 317-318.) Reversal is not warranted if the findings are reasonable and supported by the evidence, even if a contrary finding might also be reasonable. (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)

The standard of proof in juvenile proceedings is the same one used in adult criminal trials. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) A juvenile court's judgment will not be reversed unless it is clearly shown that on no hypothesis whatever is there sufficient substantial evidence to support the findings. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.)

The juvenile court found Aguilara's field identification of appellant compelling, even though she did not identify appellant as the shooter in court. The fact that she did not make an identification of appellant during trial is explained by her stated fear of retaliation from the Sureno and Norteno gangs. While she did not identify appellant in

the courtroom, she did testify that she made a positive identification at the in-field show-up. A police officer testified that she specifically identified appellant at that show-up.

Aguilara's field show-up identification of appellant constitutes substantial evidence that he was the shooter. That identification was made shortly after the crime occurred. Her identification was definite and certain. A single eyewitness identification is sufficient to prove the defendant's identity as the one who committed a crime even when that identification is not confirmed in court. In fact, an out-of-court identification generally has more probative value than an in-court identification. (*People v. Boyer* (2006) 38 Cal.4th 412, 480.)

DISPOSITION

The judgment is affirmed.

Kane, J.

WE CONCUR:

Dawson, Acting P.J.

Poochigian, J.